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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RUSSELL MARK RICHMAN

Appeal 2009-008245
Application 10/602,539
Technology Center 2600

Before JOHN C. MARTIN, JOSEPH F. RUGGIERO, and, ROBERT E. NAPPI, *Administrative Patent Judges.*

NAPPI, *Administrative Patent Judge.*

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

This is a decision on appeal under 35 U.S.C. § 134(a) of the rejection of claims 1 through 10 and 14 through 21.

We affirm-in-part.

INVENTION

The invention is directed to an apparatus for wireless communication among integrated circuits devices within a single enclosure. See page 2 of Appellant's Specification. Claim 1 is reproduced below:

> 1. A method for wireless communication among first and second integrated circuit devices within an enclosure, said method comprising the steps of:
>
> transmitting a signal using a first antenna associated with said first integrated circuit device in accordance with an ultra wide band wireless standard: and
>
> receiving said signal using a second antenna associated with said second integrated circuit device within said enclosure.

REFERENCES

Ghaem	US 5,335,361	Aug. 2, 1994
Metze	US 5,754,948	May 19, 1998
Cheung	US 6,577,157 B1	Jun. 10, 2003
Larrick, Jr.	US 6,690,741 B1	Feb. 10, 2004
Nozawa	US 6,942,157 B2	Sep. 13, 2005

REJECTIONS AT ISSUE

The Examiner has rejected claims 1, 2, 5, 6, 10, and 14 through 20 under 35 U.S.C. § 103(a) as being unpatentable over Metze in view of Larrick. The Examiner's rejection is on pages 3-5 of the Answer.

The Examiner has rejected claims 3 and 21 under 35 U.S.C. § 103(a) as being unpatentable over Metze in view of Larrick and Cheung. The Examiner's rejection is on pages 5-6 of the Answer.

The Examiner has rejected claim 4 under 35 U.S.C. § 103(a) as being unpatentable over Metze in view of Larrick and Nozawa. The Examiner's rejection is on page 6 of the Answer.

The Examiner has rejected claims 7 through 9 under 35 U.S.C. § 103(a) as being unpatentable over Metze in view of Larrick and Ghaem. The Examiner's rejection is on page 7 of the Answer.

ISSUES

Appellant argues on pages 4 and 5 of the Brief[2] that the Examiner's rejection of independent claims 1, 14, and 17 under 35 U.S.C. § 103 is in error. Appellant reasons that Metze does not teach or suggest using "ultra wide bandwidth" communications and that Metze is limited to communication of discrete frequencies; thus, Appellant concludes Metze teaches away from the present invention.

Thus, Appellant's arguments with respect to the rejection of Independent claims 1, 14, and 17 present us with the issue, did the Examiner err in finding that the skilled artisan would modify Metze to use ultra wide bandwidth communications as claimed?

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[2] Throughout this decision we refer to the Appeal Brief dated October 10, 2008 and Reply Brief dated February 4, 2009.

With respect to claims 3 and 21, Appellant's additional arguments, on page 6 of the Brief, present us with the issue, did the Examiner err in finding that Cheung teaches using pins as antennas to receive a signal as claimed?

PRINCIPLES OF LAW

"'A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant.'" *Ricoh Co., Ltd. v. Quanta Computer, Inc.*, 550 F.3d 1325, 1332 (Fed. Cir. 2008) (quoting *Kahn*, 441 F.3d 977, 990 (Fed. Cir. 2006)). A reference does not teach away if it merely expresses a general preference for an alternative invention from amongst options available to the ordinarily skilled artisan, and the reference does not discredit or discourage investigation into the invention claimed. *In re Fulton*, 391 F.3d 1195, 1201 (Fed. Cir. 2004).

ANALYSIS

Rejection of claims 1, 2, 5, 6, 10, and 14 through 20

Appellant's arguments have not persuaded us that the Examiner erred in finding that the skilled artisan would modify Metze to use ultra wide bandwidth communications as claimed. Representative claim 1 recites "transmitting a signal ... in accordance with an ultra wide band wireless standard." The Examiner in the rejection of claim 1 finds that:

> Metze does not explicitly state that the signal is transmitted in accordance with an ultra wide band wireless standard. Larrick et al teach that with the technology of MIMIC, the transmitters can transmit at ultra wide band signal.

Answer 3-4. We concur with these findings by the Examiner. Appellant's arguments directed to Metze teaching using a different transmission standard does not show error in the Examiner's determination of obviousness. There is ample evidence of record, the teachings of Larrick, and the existence of IEEE standards (see Appellant's arguments on page 2) to support the Examiner's finding that ultra wide band communications were known in the art. Further, we are not persuaded by Appellant's argument that Metze teaches away from the claimed invention by teaching using discrete frequencies. We fail to see how one skilled the art would be discouraged from modifying Metze's device because the only embodiment disclosed in Metze is of a different communication standard. Accordingly, Appellant's arguments have not persuaded us of error in the Examiner's rejection of independent claims 1, 14, and 17.

Dependent claims 2, 5, 6, 10, 15, 16, and 18 through 20 are similarly rejected and Appellant's arguments have not separately addressed these claims. Thus, we will sustain the Examiner's rejection of claims 1, 2, 5, 6, 10, and 14 through 20 under 35 U.S.C. § 103(a).

Rejections of claims 4, and 7 through 9

The Examiner's rejections of dependent claims 4 and 7 thorough 9 similarly rely upon the teachings of Metze and Larrick to teach the limitations of independent claim 1. Appellant has not addressed the Examiner's rejection of these claims. Thus, we will sustain the Examiner's rejections of claims 4 and 7 through 9 under 35 U.S.C. § 103(a) for the same reasons as claim 1.

Rejection of claims 3 and 21

Appellant's arguments have persuaded us that the Examiner erred in finding that Cheung teaches using pins as antennas to receive a signal as claimed. Appellant argues that Cheung teaches that it is an unintended result that the pins act as an antenna as they create noise. Brief 6. In response the Examiner states: "if the pin antenna of Cheung et al. generates noise and not transmitting [a] signal, so does the pin antenna of the present invention." Answer 10. We disagree with the Examiner's rationale. Cheung teaches programmable pads or pins and explains that if they are left to float they can act as antennas and generate noise. Col. 5, ll. 43-48. Cheung discloses solutions to prevent the pins from floating, and generating noise. Col. 5, ll. 50-67. Thus, while claim 3 recites that the antennas transmit and receive the ultra wide band signals, Cheung teaches steps must be taken to prevent pins from generating noise by acting as an antenna. Thus, we do not find that Cheung teaches using pins as an antenna to transmit and receive signals as claimed. Accordingly, we will not sustain the Examiner's rejection of claims 3 and 21 under 35 U.S.C. § 103(a).

CONCLUSION

Appellant has not persuaded us of error in the Examiner's decision to reject claims 1, 2, 4 through 10, and 14 through 20. However, Appellant's arguments have persuaded us of error in the Examiner's decision rejecting claims 3 and 21.

ORDER

The decision of the Examiner to reject claims 1 through 10, and 14 through 21 is affirmed in part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

AFFIRMED-IN-PART

ELD

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